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IN THE

Supreme Court of the United States

October Term 1947

No.....

PAUL W. SAMPSELL, as Trustee in Bankruptcy for the Estate of C. A. REED FURNITURE COMPANY, a corporation, Bankrupt,

Petitioner,

vs.

LAWRENCE WAREHOUSE COMPANY, a corporation,

Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Supreme Court of the United States:

The petitioner, Paul W. Sampsell, as Trustee in Bankruptcy for the Estate of C. A. Reed Furniture Company, a corporation, Bankrupt, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit rendered and entered May 12, 1948 [R. 69-70] and numbered therein as 11844. [Opinion, R. 62-69.] Such judgment affirmed a summary judgment entered by the District Court of the United States for the Southern District of California, Central Division, on December 29, 1947, in favor of the above named respondent. [R. 51-52.]

Summary and Short Statement of Matter Involved.

By his complaint, plaintiff sought recovery from respondent, Lawrence Warehouse Company and another defendant, California Bank, for the value of merchandise warehoused by the bankrupt, C. A. Reed Furniture Company, with respondent, which in turn issued its warehouse receipts for such merchandise to California Bank as security for loans made by that defendant to the bankrupt. Except for the difference in dates, serial numbers and the merchandise covered thereby, these warehouse receipts were all in identical form to the one attached to the complaint as "Exhibit A." [R. 19-20.]

Each such receipt acknowledged the receipt by respondent of the merchandise, described on the face thereof, from the bankrupt, "for the account of and to be delivered without surrender of this warehouse receipt upon the written order of California Bank."

All of the merchandise involved in these various warehouse receipts is listed on "Exhibit B" to the complaint [R. 21-36], and is alleged to have had a value of $83,808.00 at the time it was wrongfully delivered by respondent to the California Bank [R. 6], the pledgee of these warehouse receipts. [R. 4-6.] The unpaid balance of such bank loans aggregated $89,963.37 at the time the California Bank was given possession of such merchandise by respondent on June 26, 1947. [R. 4.]

C. A. Reed Furniture Company was adjudicated a bankrupt on July 11, 1947, and plaintiff was thereupon appointed its trustee. [R. 2-3.] Prior to the filing of this action, California Bank had disposed of this merchandise, so appellant sought a money judgment for its value in this action.

Respondent moved for a summary judgment, and the District Court granted such motion and entered judgment against petitioner. This judgment was affirmed by the Circuit Court of Appeals on May 12, 1948, and a petition for rehearing was denied on June 9, 1948.

The District Court filed a brief memorandum opinion predicating its decision on a proposition of law at variance with both the decisions of this Court, the Federal Courts, and the courts of the State of California. The Circuit Court of Appeals impliedly disapproved the District Court's reasoning, by ignoring it and by basing its decision on an entirely different ground, which the District Court, in turn, had orally rejected in open court and impliedly disapproved by failing to embrace in its memorandum opinion.

Petitioner's action was predicated upon the contention that the pledgee's lien of the California Bank was void because the warehouse receipts issued by respondent to that bank were void. The invalidity of those receipts arose from the fact that respondent in issuing such receipts had failed to have them show on their faces the rate of storage charges per month or per season as required by section 1858b of the Civil Code of California.

Section 1858f of such Civil Code makes it a felony to violate any of the provisions of that section 1858b and provides heavy penalties by fine or imprisonment or both, for any such violation.

Under paragraphs XII and XIII of the complaint, the necessary facts are alleged to show that the bankrupt was insolvent in the bankruptcy sense at the time that possession of this merchandise was delivered by respondent to the California Bank, and at the time that this bank disposed of the same. [R. 9-12.] Knowledge on the part of

both respondent and California Bank of such insolvency is also alleged. [R. 10.] The extent of such continuing insolvency is further demonstrated by allegations showing debts of the bankrupt of approximately $173,717.96 as against assets of not to exceed $25,000.00. These computations do not include debts to secured creditors who have availed themselves of such security, nor do they include actions of this character to recover asserted preferential transfers as assets.

The pledge to California Bank being invalid, it had no right to preferential treatment as a creditor of the bankrupt, and it is accountable to the petitioner, as trustee, for the value of the merchandise which it received and disposed of. In other words, it is a general creditor and not a valid lien creditor. The respondent is likewise liable in damages to petitioner for having wrongfully delivered such merchandise to the California Bank whose only claim to possession thereof arose from the issuance to it, as pledgee, of the void warehouse receipts.

The fact that respondent might, in turn, have a cause of action against the California Bank for the value of the merchandise which it mistakenly delivered to that bank, or that one or both of those two defendants may be entitled to participate as general creditors in the assets of the bankrupt is material here only to emphasize that petitioner's action was to recover the value of merchandise preferentially transferred to defendant California Bank by respondent warehouse company.

The suit is not one to forfeit the proceeds of a loan to the bankrupt, but to prevent such lender from enjoying the preferential treatment as a valid lien claimant when its lien was void. The jurisdiction of the District Court over this action is conferred by sections 96(a), 96(b),

107(a), 107(e) and 110(e) of Title 11, U. S. C. A., relating to recoveries for preferential and void transfers of property of the bankrupt.

Rule 20(a) of the Federal Rules of Civil Procedure authorizes the joinder of the two defendants in this action.

Basis of Jurisdiction of the United States Supreme Court to Review the Judgment.

The statutory authority upon which it is contended that this court has jurisdiction to issue a Writ of Certiorari and review the judgment in question is Section 240(a) of the Judicial Code, as amended 43 Stat. 938 (Title 28, United States Code Annotated, Section 347a). Jurisdiction is also conferred by sections 47a and 48c of Title 11, U. S. C. A., relating to bankruptcy.

See also *Childs v. Ultramares Corp.* (Second Circuit), 40 F. (2d) 474, at 477, where it is said:

> " 'Controversies' are ordinary suits in equity or actions at law between the trustee as such and adverse claimants of property; . . ."

The Questions Presented.

1. Were sections 1858b and 1858f of the California Civil Code (adopted in 1905), repealed, either expressly or by implication, by the Warehouse Receipts Act which was adopted in 1909? Stated in another way, are the provisions of those two acts inconsistent and repugnant to one another?

2. If no such repeal was effected, then were not the warehouse receipts void as being issued in violation of a criminal statute? If they were void, was not the pledge which depended upon them also void or unperfected so as to afford the pledgee no prior rights to the merchandise involved?

Reasons for Allowing the Writ.

1. The decision of the Circuit Court to the effect that the Warehouse Receipts Act (Act 9059, Deering's California General Laws), repealed sections 1858b and 1858f of the California Civil Code conflicts with applicable decisions of the California courts.

2. Such decision is largely predicated upon a prior decision of that court in *Heffron v. Bank of America,* 113 F. (2d) 239, which held that the Warehouse Receipts Act was intended to be the sole repository of the law relating to warehoused goods, and, therefore, had repealed section 3440 of the Civil Code in so far as that section related to bulk sales of warehoused goods. Since that decision the California legislature has repudiated that decision by amending section 3440.5 of the Civil Code by specifying the conditions upon which section 3440 should and should not apply to warehoused goods. The decision is, therefore, contrary to the legislature's expressed intent.

Conclusion.

For the reasons above assigned, petitioner prays that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

THOMAS S. TOBIN,
Attorney for Petitioner.

FRANK C. WELLER and
JAMES A. MCLAUGHLIN,
Of Counsel.

State of California, County of Los Angeles—ss.

Thomas S. Tobin, being first duly sworn, deposes and says that he is the attorney for the petitioner named in the foregoing Petition for Writ of Certiorari; that he has read the foregoing Petition for Writ of Certiorari and knows the contents thereof; and that the same is true of his own knowledge except as to the matters which are therein stated upon his information or belief, and as to those matters, that he believes them to be true.

THOMAS S. TOBIN.

Subscribed and sworn to before me this 2nd day of July, 1948.

(Seal) R. M. MCLEOD,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires Dec. 9, 1950.

IN THE

Supreme Court of the United States

October Term, 1947

No.....

PAUL W. SAMPSELL, as Trustee in Bankruptcy for the Estate of C. A. REED FURNITURE COMPANY, a corporation, Bankrupt,

Petitioner,

vs.

LAWRENCE WAREHOUSE COMPANY, a corporation,

Respondent.

BRIEF IN SUPPORT OF PETITION.

Petitioner adopts the Summary and Short Statement of Matter Involved, contained in his Petition, as the statement of facts herein, and also adopts the statement of Jurisdiction contained in such Petition.

Specifications of Error.

The Circuit Court erred in affirming the Summary Judgment entered by the District Court. Stated in another way, both of those courts erred in holding that the California Civil Code sections relied upon by petitioner as invalidating the pledge, had been repealed by the adoption of the Warehouse Receipts Act, and that, consequently, the complaint did not state a cause of action.

ARGUMENT.

I.

Sections 1858(b) and 1858(f) of the Civil Code Were Not Repealed by the Adoption of the "Uniform Warehouse Receipts Act."

Section 60 of the "Uniform Warehouse Receipts Act" provides that "all acts or parts of acts inconsistent with this act are hereby repealed." There is nothing inconsistent in the provisions of Sec. 1858(b) requiring that the rate of storage charges be shown. In fact, the Uniform Warehouse Receipts Act requires that the rate of storage charges be shown on the receipt also (Sec. 2(e) Act 9059 General Laws). In this connection, there is no substantial difference between the Civil Code Sections and the Warehouse Receipts Act except that the Civil Code Sections make it a criminal act to violate the provisions as to these requirements. Therefore, instead of being inconsistent, the two Acts harmonize with one another.

There has been no repeal by implication because both Acts are capable of being read together and there is no provision in one which is repugnant to the other in so far as the requirement that the receipt show the storage charges. The fact that two Acts may be different is not sufficient to invoke the doctrine of repeal by implication. There must be such irreconcilable repugnancy that the two cannot possibly stand together.

In 23 California Jurisprudence (Statutes), Sec. 85, at page 698, the rule is stated:

> "Whenever there is an irreconcilable conflict or repugnancy between the provisions of two acts, so that upon any reasonable construction they cannot stand together, the earlier act is repealed by the later one, without any repealing clause, an intention to repeal

the prior statute being necessarily implied in such case. But, in view of the presumption against implied repeals, and the recognized duty of the courts to give effect, as far as possible, to all statutes not expressly repealed, it is settled that the inconsistency or repugnancy between the two must be irreconcilable and very clear in order that an implied repeal may be said to exist. Repugnancy between two acts in principle merely forms no reason why both may not stand."

See also:

People v. Carter, 131 Cal. App. 177 at p. 181;

Napa State Hospital v. Yuba County, 137 Cal. 378 at 383;

People v. Platt, 67 Cal. 21 at 22; and

59 Corpus Juris. (Statutes), Sec. 520 at p. 921.

The California courts have expressly repudiated the theory that the Civil Code sections were repealed by the adoption of the Warehouse Receipts Law.

In *Lewis-Simas-Jones Co. v. C. Kee & Co.,* 27 Cal. App. 135, plaintiff sued the defendant for the purchase price of potatoes sold by plaintiff while they were stored in a public warehouse. Plaintiff did not transfer any warehouse receipts to the defendant, but gave the defendant a written order on the warehouseman, directing delivery of the potatoes to the defendant. Later the defendant repudiated the transaction and claimed that there had been no delivery of the potatoes.

The Court concerned itself with the question whether there had been a symbolic delivery by giving the defendant the written order on the warehouseman. It rejected the appellant's contention that the Warehouse Receipts Act

of 1909 exclusively governed the transfer of warehoused merchandise. Under Sections 37-43 of that Act, it was necessary for plaintiff to have transferred his warehouse receipts to the defendant to accomplish a transfer or delivery of the potatoes, and defendant had not done this. The Court said that the law as it existed prior to the Warehouse Receipts Act and as it was embodied in Section 1858(d) of the Civil Code, permitted the delivery of the warehoused property "upon the written order of the person to whom the receipt was issued."

This is a direct decision to the effect that the "Uniform Warehouse Receipts Act" did not repeal the Civil Code sections, and in referring to the "Uniform Warehouse Receipts Act," the Court said, at page 138:

> "Upon the reading of the entire act we do not find that there is anywhere expressed in it an intention to require a departure from the rule laid down in the earlier cases and remaining unchanged up to the time of its passage, making the written order of a depositor of goods in a warehouse, upon which there has been issued a non-negotiable receipt, sufficient to pass, by its delivery, receipt, and acceptance, the title and symbolical possession of personal property not capable of manual delivery so as to satisfy the statute of frauds, and entitled the seller to recover from the buyer its purchase price."

In *Norton v. Lyon Van & Storage Co.*, 9 Cal. App. (2d) 199, plaintiff's action was predicated upon the warehouse company's wrongful refusal to return his goods, and the question was whether the warehouse company had lawfully enforced its lien thereon for storage. The plaintiff on his appeal contended that the Warehouse Receipts Act providing for notice of sale in the enforcement of the lien

was unconstitutional. The Court first said that it saw no reason for not sustaining the constitutionality of the Act, in so far as the provisions relating to warehousemen's liens were concerned. It then went on to say, at page 204:

> "Even in the absence of the Warehouse Receipts Act, a depositary for hire has a lien for storage charges and expenses of sale (Civ. Code, secs. 1856, 3051), and in the event of nonpayment may sell the property deposited. (Civ. Code, sec. 3052.)"

Section 1856 of the Civil Code, referred to in the above opinion relates to the lien of a depositary for storage, and the recognition of the continued operation of this section is also a direct decision that the Civil Code sections relating to warehousing were not repealed by the enactment of the Warehouse Receipts Act.

In *A. Widemann Co. v. Digges,* 21 Cal. App. 342, the Court affirmed a judgment in favor of the plaintiff upon a sales agreement for the sale of warehoused grain. In answer to the contention that there had been no timely tender of delivery on the plaintiff's part, the Court said, at page 348:

> "The transfer of negotiable warehouse receipts is a symbolical delivery of the goods called for by them, and passes the title thereto as effectually as if an actual delivery had been made. (Civ. Code sec. 1858(b).)"

This transaction took place in 1910, a year after the adoption of the Uniform Warehouse Receipts Act, and the decision of the Supreme Court was on February 28, 1913, four years after the adoption of the Uniform Warehouse Receipts Act.

In *Chatterton v. Boone,* 81 A. C. A. 1108 (decided October 20, 1947), the Court affirmed a judgment against the defendant warehouse company for damages resulting from a fire on the theory that the warehouse company had failed to exercise reasonable care in the protection and preservation of the goods after the fire, as required by Section 1858(e) of the Civil Code.

In *Northwestern M. F. Assn. v. Pacific Co.,* 187 Cal. 38, in determining the liability of the warehouse company for destruction of goods by fire, the Court referred to and quoted the provisions of Section 1858(e) of the Civil Code as governing the care to be exercised.

In *Defense Supplies Corporation v. Lawrence Warehouse Company,* District Court, N. D. California, S. D., 67 Fed. Supp. 16, the defendant warehouse company was sued along with other defendants for damages to tires which had been warehoused, and the Court referred to both the provisions of the Civil Code and the Warehouse Receipts Act as concurrently governing the liability. On page 20, the Court said:

> "If Capitol Chevrolet Company, the agent of Lawrence Warehouse Company, failed to use reasonable care for the preservation of plaintiff's goods whereby the damage was caused or contributed to, Lawrence Warehouse Company is liable to plaintiff. California Warehouse Receipts Act, Sec. 21, Gen. Laws, Act 9059; California Civil Code, Sec. 1858e."

The above cited cases all demonstrate that the courts continue to regard the Civil Code sections dealing with

warehousing as concurrently effective along with the Warehouse Receipts Act. The last three of those cases deal with the care to be exercised by warehousemen as defined by Section 1858(e) of the Civil Code, but as is pointed out in the *Defense Supplies Corporation* case, Section 21 of the Warehouse Receipts Act also deals with the subject of care, and yet the courts have not interpreted this as a repeal by implication of the Civil Code sections dealing with the care to be exercised by warehousemen.

II.

None of the Three Decisions Cited by the Circuit Court Opinion Are Pertinent.

The Circuit Court of Appeals first cites *Commercial National Bank v. Canal-Louisiana B. & T. Co.*, 239 U. S. 520, 528, 529, as authority for the proposition that the Warehouse Receipts Law repealed previously existing laws. That case did not involve the repeal of previous statutes by implication. It involved the question whether case law previously existing which was in conflict with the Warehouse Receipts Law when adopted in Louisiana continued to be operative and the Court held that the purpose of the Warehouse Receipts Law was to create a uniformity. If the case had involved statutes similar to the Civil Code sections of the State of California, the Court would have been confronted with a different problem.

The case of *Heffron v. Bank of America*, 113 F. (2d) 240, has already been dealt with in our petition for certiorari.

In the case of *Jewett v. City Transfer & Storage Co.*, 128 Cal. App. 556, the Court held that the remedy provided by Section 3052 of the California Civil Code with respect to enforcement of storage liens, was not applicable in view of the fact that Sec. 33 of the Warehouse Receipts Act provided a similar procedure by sale and the only difference was the manner of giving notice. The Court stated that the enactment of the Warehouse Receipts Act did not preclude other remedies for the enforcement of a lien against personal property but since the remedy provided in Section 3052 of the Civil Code was the same except for the manner of giving notice that it could not be relied upon as excusing the type of notice required by Sec. 33 of the Warehouse Receipts Act.

The later case of *Norton v. Lyon Van & Storage Co., supra,* involved the identical code section and reached an opposite result. It should further be noted that we are not concerned with the question whether compliance with a section of the Civil Code excuses compliance with a provision of the Warehouse Receipts Law. As applied to the case at bar, both statutes require that the rate of storage charges be shown on the face of the receipt, the difference being that the Civil Code sections make it a felony for a warehouse company to issue a warehouse receipt that does not comply. We are not concerned with a situation where respondent can show compliance with the Warehouse Receipts Law as an excuse for failing to comply with the Civil Code sections. It did not comply with either of these statutes.

III.

The Warehouse Receipts Were Invalid Because Issued by Defendant Warehouse Company in Violation of Sections 1858(b) and 1858(f) of the Civil Code.

Sec. 1858(b) of the Civil Code requires that warehouse receipts show on their face the rate of storage charges per month or per season, and Sec. 1858(f) of the Civil Code makes it a felony for anyone to issue a warehouse receipt which does not comply with the requirements of Sec. 1858(b). The receipts having been issued in violation of a criminal statute are, therefore void.

See:

Berka v. Woodward, 125 Cal. 119 at 127 and 129;

Wread v. Coffee-Murray, Inc., 42 Cal. App. (2d) 783 at 785 and 786;

Smith v. Bach, 183 Cal. 259;

Napa Valley Elec. Co. v. Calistoga Elec. Co., 38 Cal. App. 477;

King v. Johnson, 30 Cal. App. 63;

Wise v. Radis, 74 Cal. App. 765;

Firpo v. Murphy, 72 Cal. App. 249;

Buffendeau v. Brooks, 28 Cal. 641;

La Rosa v. Glaze, 18 Cal. App. (2d) 354;

Stockton Plumbing & Supply Co. v. Wheeler, 68 Cal. App. 592;

Otten v. Riesener Chocolate Co., 82 Cal. App. 83;

Boss v. Silent Drama Syndicate, 82 Cal. App. 109;

California Delta Farms v. Chinese American Farms, 207 Cal. 298;

City of Los Angeles v. Walterson, 8 Cal. App. (2d) 331;

Duntley v. Kagarise, 10 Cal. App. (2d) 397;

Hiroshima v. Bank of Italy, 78 Cal. App. 362;

Shasta County v. Woody, 90 Cal. App. 519;

Young v. Laguna L. & W. Co., 53 Cal. App. 178;

6 *California Jurisprudence* (*Contracts*), at page 105; and

17 *Corpus Juris Secundum,* at page 555.

IV.

The Warehouse Receipts Constitute the Documents Pledged and, Being Void, the Pledge Conferred No Rights Upon the Pledgee Bank Whatsoever.

See:

Hollywood State Bank v. Wilde, 70 Cal. App. (2d) 103.

V.

It Is Not Necessary That the Statute Confer Any Right to Recover Property Which Has Been Parted With Under an Illegal and Void Contract as the Law Furnishes the Implied Contract to Compensate for Such Property.

See:

Hollywood State Bank v. Wilde, 70 Cal. App. (2d) 103 at 112;

Reno v. American Ice Machine Co., 72 Cal. App. 409 at 413;

Black v. Solano Co., 114 Cal. App. 170 at 176;

Cecil B. DeMille Productions v. Wooley (9th Circuit), 61 F. (2d) 45 at 48;

Randall v. California L. B. Syndicate, 217 Cal. 594 at 598;

Castle v. Acme Ice Cream Co., 101 Cal. App. 94;

Mary Pickford Co. v. Bayley Bros., Inc., 12 Cal. (2d) 501 at 519; and

Hertz Drivurself Stations v. Ritter (9th Circuit), 91 F. (2d) 539.

VI.

The Warehouse Receipts Being Void and Thereby Invalidating the Entire Pledge, the Pledgee Bank Had No Lien Which Entitled It to Any Priority Over General Creditors and Had No Right to Take Possession of the Warehoused Property Where Such Depended Upon a Valid Pledge. It Is Liable, Therefore, to Return to the Trustee the Value of Such Warehoused Property, That Is the Proceeds Which It Received From Its Sale and Disposition.

See:

Corn Exchange N. B. & Tr. Co. v. Klauder, 318 U. S. 434;

In re Talbot Canning Corp., 35 Fed. Supp. 680, and 39 Fed. Supp. 858;

Kirst v. Buffalo Cold Storage Co., 36 Fed. Supp. 401;

In re Herksimer Mills Co., Inc., 39 Fed. Supp. 625;

Susquehanna T. & S. D. Co. v. U. T. & T. Co., 6 F. (2d) 179;

In re Silver Cup Bar & Grill, 50 Fed. Supp. 528;

In re Seim Const. Co., 37 Fed. Supp. 855;

Arena v. Bank of Italy, 194 Cal. 195;

Chichester v. Commercial Credit Co., 37 Cal. App. (2d) 439;

In re Boswell, 95 F. (2d) 239;

Secs. 96(a), 96(b), 107(e) and 110(e) of 11 U. S. Code Ann.; and

8 Corpus Juris Secundum (Bankruptcy), page 841.

VII.

The Act of Defendant Warehouse Company in Delivering the Warehoused Property to Defendant Bank Constituted a Conversion Rendering the Warehouse Company Liable in Damages for the Value of Such Warehoused Property.

See:

Sec. 10, Act 9059, *General Laws of California;* and

Aronson v. Bank of America, 9 Cal. (2d) 640 at 643.

Plaintiff does not contend that the defendant bank cannot participate in the assets of the bankrupt along with other general creditors but he does contend that such defendant bank should not have the benefits of a lien claimant where the lien is void. By the same token, defendant warehouse company may have a claim against the defendant bank to recover the value of the building materials which the warehouse company illegally delivered to that bank.

VIII.

The Fact That Section 1858(f) of the Civil Code, in Addition to Specifying a Criminal Penalty Provides That a Person Injured Can Sue for Damages, Does Not Operate to Make the Warehouse Receipts Issued in Violation of the Criminal Provisions Valid.

In view of the fact that the basis of the Circuit Court's ruling was not the same as that of the District Court and that neither of these two courts gave any indication of agreeing with the reasoning of the other, we should demonstrate that the reasoning of the District Court was

equally untenable. The District Court said in its memorandum of opinion:

> "The statutes under consideration (Sections 1858 (b)(f) California Civil Code and Act 9059, California General Laws) have provided both civil and criminal (47) remedies for failure to comply with the statute. When this is the case, the general rule to the effect that when an instrument is issued in violation of a penal statute, it is invalid, does not apply." [R. 50.]

In other words, the District Court ruled that since Section 1858(f) of the Civil Code contained a provision for a civil remedy that this demonstrated a legislative intent that a receipt issued contrary thereto should not be void. Such decision is at variance with the law as announced by the California decisions and also is contrary to the principle universally followed by the Federal Courts in dealing with criminal statutes which also provide civil remedies. The California courts have held in two instances where the Legislature expressly provided that a contract in violation of a criminal statute should not be void but merely voidable, that in spite of such statute, the contract was absolutely void:

See:

Berka v. Woodward, 125 Cal. 119 at pages 127, 129; and

Wread v. Coffee-Murray, Inc., 42 Cal. App. (2d) 783 at 785 and 786.

If the Legislature cannot confer conditional validity on an illegal contract by expressly making it voidable and not void, it certainly cannot make such a contract valid by specifying a civil remedy to a party injured. In fact, it has been held that express statutory provisions for a

particular remedy or relief do not destroy remedies and rights of recovery which already exist under the common law.

See:

Estate of Ward, 127 Cal. App. 347 at 354.

There have been numerous instances of Federal statutes making particular acts unlawful and providing for civil remedies to persons damaged thereunder. In all of these instances the Federal courts have held that a contract in violation of such criminal statute is void.

As to cases involving violation of the anti-trust laws, see:

Dr. Miles Medical Co. v. Park & Sons Co., 220 U. S. 373, 408, 409;

Continental Wallpaper Co. v. Louis Voight & Sons Co., 212 U. S. 227, 261, 263;

Standard Co. v. Magrene-Houston Co., 258 U. S. 346, 357;

Vitagraph, Inc. v. Theatre Realty Co., Inc., 50 F. (2d) 907, 908;

U. S. v. Addyston Pipe & Steel Co., 85 Fed. 271, 279, 282;

Darius Cole Transportation Co. v. White Star Line, 186 Fed. 63, 68; and

Morey v. Paladini, 187 Cal. 727 at 736.

As to cases involving violations of the Emergency Price Control Act, see:

Long Island Structural Steel Co., Inc. v. Schiavone-Bonomo Corporation, District Ct. S. D. New York, 53 Fed. Supp. 505 (affirmed without an opinion in 142 F. (2d) 557); and

Morgan Ice Co. v. Barfield, et al., Court of Civil Appeals of Texas, 190 S. W. (2d) 847.

As to cases involving violations of the Fair Labor Standards Act, see:

Jewel Ridge Coal Corp. v. Local No. 6167, U. M. W. A., 325 U. S. 161, 89 L. Ed. 1534;

Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123, 321 U. S. 590, 88 L. Ed. 949;

Eustice v. Federal Cartridge Corporation, 66 Fed. Supp. 55;

Walling v. Richmond Screw Anchor Co., 59 Fed. Supp. 291; and

Chepard v. May, 71 Fed. Supp. 389.

We respectfully submit that the District Court was right when it refused to embrace the contention that a criminal statute relating to warehouse receipts was repealed by a subsequent statute which did not deal with the subject criminally. By the same token, the District Court was in error in predicating its decision upon the ground that the provisions for a civil remedy saved the warehouse receipt from becoming invalid. On the other hand, the Circuit Court was correct when it failed to embrace the reasoning of the District Court but it was wrong in invoking the contention that the Warehouse Receipts Act repealed the Civil Code sections.

For the reason above assigned, petitioner prays that a Writ of Certiorari be granted.

Respectfully submitted,

THOMAS S. TOBIN,
Attorney for Petitioner.

FRANK C. WELLER and
JAMES A. MCLAUGHLIN,
Of Counsel.

APPENDIX.

Section 1858b of the California Civil Code provides as follows:

"Sec. 1858b. **Warehouse receipts, classification and effect of.** Warehouse receipts for property stored are of two classes: first, transferable or negotiable; and second, non-transferable or non-negotiable. Under the first of these classes the property is transferable by indorsement of the party to whose order such receipt was issued, and such indorsement is a valid transfer of the property represented by the receipt, and may be in blank or to the order of another. All warehouse receipts must distinctly state on their face for what they are issued and its brands and distinguishing marks and the rate of storage per month or season, and in the case of grain, the kind, the number of sacks, and pounds. If a receipt is not negotiable, it must have printed across its face in red ink, in bold, distinct letters, the word 'non-negotiable.' (Added by Stats. 1905, p. 612.)"

Section 1858f of the California Civil Code provides as follows:

"Sec. 1858f. **Penalties and liabilities.** Every warehouseman, wharfinger, or other person who violates any of the provisions of sections eighteen hundred and fifty-eight to eighteen hundred and fifty-eight e, inclusive, is guilty of a felony, and, upon conviction thereof, may be fined in a sum not exceeding five thousand dollars or imprisonment in the state prison not exceeding five years, or both. He is also liable to any person aggrieved by such violation for all damages, immediate or consequent, which he may have

sustained therefrom, which damages may be recovered by a civil action in any court of competent jurisdiction, whether the offender has been convicted or not. (Added by Stats. 1905, p. 613.)"

The Warehouse Receipts Act is embodied in Act 9059, Deering's California General Laws. (Stats. 1909, p. 437; Amended by Stats. 1919, p. 398; Stats. 1923, p. 676; Stats. 1931, p. 1501; Stats. 1933, p. 2398; Stats. 1937, p. 2472.) The following sections of that Act are the ones material to the question whether it repealed the Civil Code sections either expressly or by implication.

"Sec. 2. **Contents of receipts: Liability for omission.** Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

(a) The location of the warehouse where the goods are stored,

(b) The date or issue of the receipt,

(c) The consecutive number of the receipt,

(d) A statement whether the goods received will be delivered to the bearer, or to a specified person, or to a specified person or his order,

(e) The rate of storage charges,

(f) A description of the goods or of the packages containing them,

(g) The signature of the warehouseman, which may be made by his authorized agent,

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouse-

man claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required."

"Sec. 57. **Interpretation of act.** This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

"Sec. 60. **Repeal of conflicting acts.** All acts or parts of acts inconsistent with this act are hereby repealed."

Section 3440.5 of the Civil Code provides as follows:

"Sec. 3440.5. (Same: Limitation on application of rule: Goods for which warehouse receipt has issued: Necessity for retention of copy.) Section 3440 of this code shall not apply to goods in a warehouse where a warehouse receipt has been issued therefor by a warehouseman as defined in the Warehouse Receipts Act, and a copy of such receipt is kept at the principal place of business of the warehouseman and at the warehouse in which said goods are stored. Such copy shall be open to inspection upon written order of the owner or lawful holder of such receipt. (Added by Stats. 1939, p. 2840; Am. Stats. 1941, ch. 1142, sec. 1.)

IN THE

Supreme Court of the United States

October Term, 1949.

No. 138

PAUL W. SAMPSELL, as Trustee in Bankruptcy for the Estate of C. A. Reed Furniture Company, a corporation, Bankrupt,

Petitioner,

vs.

LAWRENCE WAREHOUSE COMPANY, a corporation,

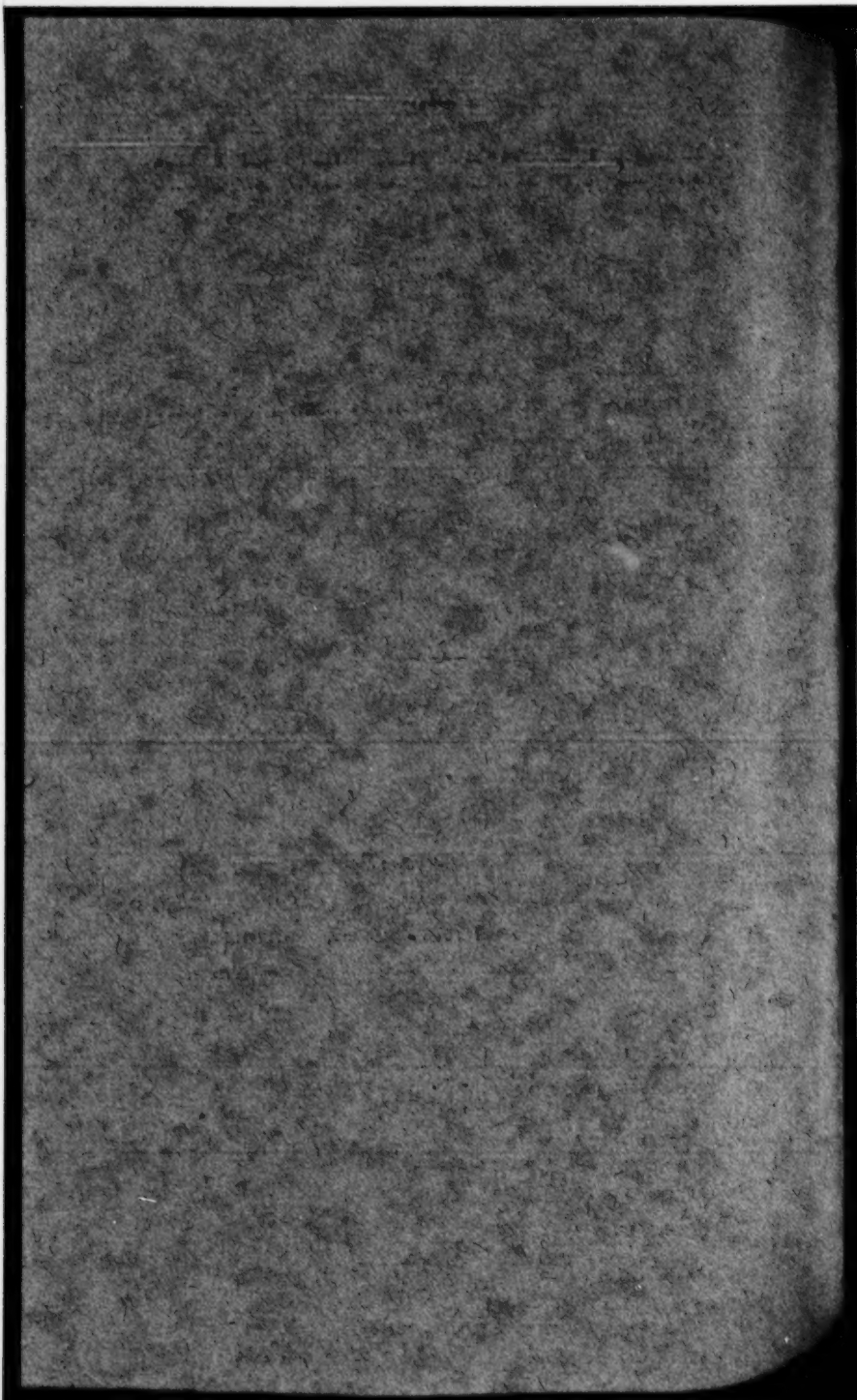
Respondent.

PETITIONER'S REPLY BRIEF.

THOMAS A. TOBIN,
1224 Bank of America Building,
Los Angeles 14, California,
Attorney for Petitioner.

FRANK C. WELLER and
JAMES A. McLAUGHLIN,
1224 Bank of America Building,
Los Angeles 14, California,
Of Counsel.

Ruebel & Company, Law Printers, Los Angeles. Phone TR. 1204.



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PETITIONER'S REPLY BRIEF.

Respondent seeks to minimize the importance of the questions involved in this proceeding by stating that four federal judges have already agreed as to a proper decision. The result was the same in each instance but the proposition on which the District Court based its decision was not embraced by the Circuit Court of Appeals. [R. 62-69.] Neither had the District Court approved the grounds upon which the Circuit Court predicated its ruling. [R. 49-50.]

The District Court reasoned that, since the criminal statute also provided a civil remedy for violation of the statute, the warehouse receipts were not void. The fallacy of such reasoning is fully dealt with on pages 20 to 24 of Petitioner's Brief in Support of His Petition.

The Circuit Court predicated its decision upon the doctrine of repeal by implication. Such a proposition cannot be invoked in one instance and be disregarded in another. Either the Warehouse Receipts Act constitutes the entire law on the subject of warehousing and, therefore, repeals all other statutes on the subject, or it repeals no prior statutes that are not directly repugnant to its provisions. The Civil Code sections which petitioner invokes are not repugnant to the Warehouse Receipts Act.

Respondent must recognize this fact, so it proceeds to argue that since the Warehouse Receipts Act is a fairly comprehensive statute, it repeals all other statutes touching the subject of warehousing.

It is important that the provisions of the Bankruptcy Act be not nullified by the preferment as lien claimants of persons whose liens are void. It is likewise vital that state statutes be not summarily brushed aside by reasoning which destroys the entire framework of many different statutes dealing with the subject.

Respondent's Argument as to Repeal by Implication Would Destroy Many Statutes Not Embodied in the Warehouse Receipts Act.

Respondent must recognize that the Civil Code sections are not repugnant to the provisions of the Warehouse Receipts Act. The two cannot only be read together, but they supplement and support each other. So, respondent proceeds to the argument that a uniform act dealing with a subject repeals other statutes dealing with the subject. This is a dangerous proposition to invoke in these times when so many things are dealt with by statute. It would be particularly hazardous in the field of Federal Legisla-

tion where the same matters are treated under a maze of different statutes.

If a uniform act automatically repeals all prior enactments on the subject regardless of whether they are repugnant, then what is the purpose of inserting a provision in the uniform act that only provisions in prior statutes which are inconsistent are repealed? Section 60 of the Warehouse Receipts Act, repealing such conflicting provisions, would be superfluous. In fact, its provisions would be nullified if the Act automatically repealed other statutes regardless of whether they were inconsistent or repugnant.

If prior statutes not embodied in the Act are automatically repealed, then what becomes of the legislative power to enact legislation dealing with the subject which is not embodied as a part of the uniform act? The same principle which operates to kill the prior statutes must likewise devitalize subsequent statutes.

There are at least two instances where the California Legislature has dealt with warehousing since the enactment of the Warehouse Receipts Act and which are not embodied in that Act. One of these is Section 3440.5 of the Civil Code, which specifies the requirements for a valid transfer of warehouse receipts covering the stock in trade of a dealer or merchant. This is the section which the legislature revitalized by amendment after the Circuit Court had said in the case of *Heffron v. Bank of America*, 113 Fed. 239, that all valid laws relating to warehousing must be embodied in the Warehouse Receipts Act.

Another comprehensive bit of legislation pertaining to the warehousing of agricultural products is contained in Sections 1245 to 1258 of the California Agricultural Code

enacted in 1933 from prior statutes adopted in 1921. These provisions profusely overlap the provisions of the Warehouse Receipts Act, as they deal with the contents of warehouse receipts and the conduct of warehousemen, yet no one would contend that they were null because not embodied in the Warehouse Receipts Act, or that they operated to repeal such Act in so far as the warehousing of agricultural products was concerned.

The authorities cited on pages 10 to 15 of Petitioner's Brief in Support of the Petition show that the doctrine of repeal by implication has no place except in instances of irreconcilable repugnancy between the two statutes.

Respondent leans heavily upon the case of *Jewett v. City Transfer & Storage Co.*, 128 Cal. App. 556, to support its contention that the Warehouse Receipts Act automatically repealed all prior statutes relating to warehousing. That case did not decide such a question. It held only that where the Warehouse Receipts Act provided a remedy, by sale upon notice, for enforcing a warehouseman's lien for storage, and Section 3052 of the Civil Code provided the same remedy but on a different notice, that the provisions of the Warehouse Receipts Act as to the notice required should govern.

The Court then proceeded to indulge in some careless dicta. It said, at page 562:

> "Considering the provisions of the statute known as the Warehouse Receipts Act, it is apparent that its purpose was to revise the entire subject matter relating to the general business of conducting a public warehouse. As hereinbefore indicated, if by any legal reason it may be held that any of the provisions of sections 3051 and 3052 of the Civil Code apply

to the subject of liens of warehousemen, these provisions, as to such liens, must be deemed repealed by the later legislative act."

The Court failed to observe that both of the Civil Code sections were *later* legislative enactments than the provisions in the Warehouse Receipts Act. That Act was adopted in 1909, whereas Sections 3051 and 3052 of the Civil Code were originally enacted in 1872, but each of these two sections was re-enacted by amendment much later than 1909. Section 3051 was re-enacted by amendments in 1911, 1929 and 1935. Section 3052 was re-enacted by amendment in 1927. (See 1941 Ed. Civil Code of California by Deering.)

The *Jewett* case was decided in 1933, so that even a casual glance at the Civil Code would have shown the Court that the Warehouse Receipts Act was not the "later" legislation.

This dicta in the *Jewett* case was ignored in the more recent case of *Norton v. Lyon Van & Storage Co.*, 9 Cal. App. (2d) 199, where the Court held that Sections 3051 and 3052 of the Civil Code did include and apply to warehousemen.

The conduct of the California Courts in continuously treating the Civil Code sections as applying to warehousing transactions cannot be brushed aside. These cases are discussed in the Brief in Support of the Petition.

In concluding this phase of the case it should be noted that this vagrant dicta in the *Jewett* case was responsible for the Circuit Court embarking upon its erroneous course in the case of *Heffron v. Bank of America*, 113 F. (2d) 239.

The Decisions From Other Jurisdictions as to the Validity of Warehouse Receipts Which Do Not Comply With the Statute Are of No Assistance Because None of Them Involves the Violation of a Criminal Statute.

Under Part II of its brief (pp. 6 to 9), respondent cites several cases from other jurisdictions, holding that their failure to comply with statutory requirements did not invalidate the warehouse receipts. Not one of these cases involves the effect of violating a criminal statute upon such a document. The cases are, therefore, wholly useless in determining the issue here.

The decisions as to the effect of any document issued in violation of, or which does not comply with, the provisions of a criminal statute are too well settled to merit further discussion. The most recent reassertion of such doctrine is found in *Carter v. Seaboard Finance Company,* 85 A. C. A. 773, at 791 and 792, where the California District Court of Appeal, in a parallel case, held a conditional sales contract void because it did not comply with the statutory requirements as to what information and provisions such contracts should contain.

Under Part IV of its brief (pp. 14 to 18) respondent again pursues the argument that the warehouse receipts were not void even though issued in violation of a criminal statute. The rule is so firmly settled to the contrary that very little time need be spent on that subject. The scattered cases cited by respondent are either from jurisdictions other than California or they deal with revenue statutes as to which the rule is different.

Respondent relies upon the case of *Harris v. Runnels,* 12 How. 79, 13 L. Ed. 901, in which the Court held that

the violation of a statute requiring a certificate as to slaves brought into Mississippi did not preclude the seller from recovering the purchase price of such slaves.

In a similar but later case involving liquor instead of slaves, the Supreme Court in *Miller v. Ammon,* 145 U. S. 421, 36 L. Ed. 759, at 762, applied the rule which it has since followed, and which is directly contrary to the rule followed in the *Runnels* case.

The faint echo of the *Runnels* case which was voiced in a dictum in an early California case has been completely discredited by later decisions. In *Bentley v. Hurlburt,* 153 Cal. 796 (cited and relied upon by respondent), the question was whether the seller of lots could recover the unpaid balance of the purchase price when he had not complied with the statute forbidding the sale of lots referred to in an unrecorded subdivision map. The Court pointed out that there were two conflicting rules on the effect of illegality, citing *Berka v. Woodward,* 125 Cal. 119, as sustaining one rule, and *Harris v. Runnels* (*supra*) as authority for the contrary. It then said that it was unnecessary to select between these because the seller had in fact complied with the statute. Since then the case of *Berka v. Woodward* has become one of the leading and most frequently cited cases in this state on the effect of illegality. It is true that a few states such as Oregon and Montana have disapproved the doctrine of *Berka v. Woodward,* but it is definitely the law in California.

The case of *Uhlmann v. Kin Dow,* 193 Pac. 435 (Ore.) (cited by respondent), is an example of the minority rule that is followed in a few states as are also the cases of *Furlong v. Johnston,* 204 N. Y. Supp. 710, and *Adams Express Co. v. Darden,* 286 Fed. 61 (6th Cir.), also cited by respondent.

The case of *Levison v. Boas,* 150 Cal. 185, does not sustain respondent's position at all. Instead, it invokes the rule contended for by petitioner.

The case of *Wood v. Krepps,* 168 Cal. 382, involved a revenue licensing measure. The effect on contracts which violate a revenue measure has always been different than where the penal statute is of a different character. (See Vol. 17, Corpus Juris Secundum, page 557.)

There Was No Substantial Compliance With the Requirements of the Statute Requiring That the Warehouse Receipts Show the Rate of Storage Charges.

Respondent suggests that, because the warehouse receipt contains a statement that it is subject to a lien for storage and other charges as shown by a lease and a contract between the company warehousing the goods and the warehouse company, that this is substantial compliance.

At the outset, it should be noted that reference to this contract and lease is not made for the purpose of ascertaining the rate of storage charges per month or per season. "Storage" is mentioned first following the word "lien," but no rate or amount is shown. It is the "other charges" that reference is made to the contract and lease for. [R. 19.]

The purpose of the statute is not met by having the receipt refer to some other document or record where the storage charges are shown. The statute specifically requires this to be shown on the face of the document and this means on the document itself.

See:

Cunningham v. Great So. Life Ins. Co., Tex. Civ. App., 66 S. W. (2d) 765 at 773;

Southern Mut. Ins. Co. v. Trunley, 100 Ga. 296, 27 S. E. 975;

In re Stoneman, 146 N. Y. Supp. 172 at 174;

Investors Syn. v. Willents (D. C. Minn.), 45 F. (2d) 900 at 902; and

Burns v. Corn Exch. Natl. Bk. of Omaha, 33 Wyo. 474, 240 Pac. 683 at 687.

There are many instances where statutes require something to be noted on the face of a document—*e. g.* Rule 223 of the Rules and Regulations of the Securities and Exchange Commission requires the issuer of exempt securities to include a paragraph on the first page of its prospectus stating that the securities have not been registered because they are believed to be exempt. If respondent's argument were applied, that rule could be circumvented by making a reference on the face of the prospectus to some other document, periodical, or record for a statement as to why the securities are not registered.

In support of respondent's contention that there has been substantial compliance, it cites five cases, none of which is pertinent for the reasons hereinafter stated:

In *Standard Bank of Canada v. Lowman,* 1 F. (2d) 935 (D. C., Wash., 1924), it was contended that the rights of the pledgee of warehouse receipts were invalid as against an innocent purchaser of the goods represented by such receipts, for the reason that the warehouse receipts did not comply with the statute governing their issuance. In answer to this, the court said that warehouse receipts

need not be in any particular form, but it then proceeded to state the essential statutory requirements, and in concluding this statement, it said that the evidence showed that the receipts substantially complied wih all those requirements. There was no failure to comply with any of the statutory requirements, nor was the effect of any criminal statute involved—the only question being whether one unit of fundible goods was equivalent to any other unit.

The case of *Boas v. De Pue Warehouse Co.*, 69 Cal. App. 246, did not involve the interpretation or effect of Section 1858(b) and 1858(f) of the California Civil Code. Neither these sections nor the effect of any other criminal statute was brought to the attention of the Court. In the main, the opinion proceeds to state the law on warehousing by referring to Ruling Case Law.

The case of *San Angelo Wine etc. v. South End Warehouse Company*, 19 Cal. App. (2d) 749, in commenting upon the above case, says at page 751:

> "*Boas v. De Pue Warehouse Co.*, 69 Cal. App. 246, 250 (230 Pac. 980), presented the question whether, after the withdrawal of a part of a single bailment, a lien was retained on the residue for the entire amount of charges on the original quantity. In holding that the lien of the entire amount was retained, the court adopted a passage from 27 Ruling Case Law, page 1007, in which incidentally it was said that a warehouseman's lien is specific and not general. So far as any issue before the court was concerned, that statement was merely *dictum*. The language drawn from the volume cited was a statement of the common-law rule; and on page 1008 attention

is directed to the fact that under the uniform warehouse acts the lien is extended to all such charges and claims as are enumerated in section 27 of our act, as amended in 1933."

Neither of the two Minnesota cases, cited on page 20 of respondent's brief involved any criminal statute, and there is, therefore, no parallel between them and the case at bar.

We are not concerned with the question whether a document referred to in one contract may not be a part of the contract. We are concerned with the question whether a statute requiring something to be shown on the face of a warehouse receipt is complied with by reference in the warehouse receipt to some other document or record. The statute is explicit in requiring that it appear on the face of the document.

Respectfully submitted,

THOMAS A. TOBIN,
Attorney for Petitioner.

FRANK C. WELLER and
JAMES A. MCLAUGHLIN,
Of Counsel.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1947

No. 138

PAUL W. SAMPSELL, as Trustee in Bankruptcy for the Estate of C. A. Reed Furniture Company (a corporation), Bankrupt,
Petitioner,

vs.

LAWRENCE WAREHOUSE COMPANY (a corporation),
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS.

STATEMENT OF FACTS INVOLVED.

Respondent, Lawrence Warehouse Company, hereinafter called "Lawrence", a California corporation (R. 3), is engaged in the field warehousing business upon a national scale. On November 14, 1946, it en-

tered into a field warehouse storage agreement with the C. A. Reed Furniture Company, hereinafter called "Reed" (R. 44) and at the same time leased a portion of Reed's premises upon which to conduct the warehousing operation. (R. 6, 7.) The contract set forth in great detail the basis upon which storage rates and charges were to be computed. (R. 45-46.) Soon thereafter Reed pledged certain commodities to the California Bank as security for advances (R. 4), depositing said commodities with Lawrence and receiving from the latter, as evidence of said deposit, *non-negotiable* warehouse receipts naming the bank as owner. (R. 5, 19.) These receipts were then delivered to the bank. (R. 5.)

Upon the face of each receipt issued by Lawrence, the following statement appeared:

> "Subject to lien for storage, handling, insurance and other charges as per contract and lease with the industry served." (R. 19.)

It should be noted that the photostatic copy which appears in the printed transcript (R. 19), is not an accurate reproduction of the receipts in issue. Due to the mechanical difficulties involved in making a photostat of a photostat the words "copy of a non-negotiable warehouse receipt" which clearly appears across the face of the original have become too dim to be seen.

On July 3, 1947, the California Bank, as owner, demanded that Lawrence deliver to it the possession of the warehoused commodities. (R. 9.) In com-

pliance with this demand of the owner and holder of its warehouse receipts, Lawrence delivered the commodities to the bank on the same day. (R. 9.) On July 11, 1947, Reed became bankrupt and the petitioner was thereafter elected trustee. (R. 12.) Some four months after the pledge holder (Lawrence) had delivered the pledged property to the pledgee (the Bank) and after the Bank had sold the property and applied the proceeds to reduce the loan (R. 9), the trustee commenced this action on November 19, 1947.

In his action the petitioner attempted to set aside all of the transactions between Reed, as pledgor, Lawrence, as pledge holder, and the Bank as pledgee, except of course the loan by the Bank to Reed, upon the sole ground that the non-negotiable warehouse receipts issued by Lawrence to the Bank as evidence of the pledge did not state upon their face the rate of storage charges per month or season, as required by Section 1858(b) of the Civil Code of California. The prayer of the complaint requests repayment by Lawrence and the Bank of the $83,808.00 received by the Bank from the sale of the pledged commodities at the pledgee's sale.

Respondent, Lawrence Warehouse Company, moved for a summary judgment upon the following grounds: that Reed and Lawrence had theretofore entered into a written contract for the storage of certain goods; that that contract stated in detail the charges to be assessed for storage; that the contract charges were incorporated into the warehouse receipt by reference upon the face of the warehouse receipt; that Section

1858(b) of the Civil Code of California was repealed by the later passage of the Uniform Warehouse Receipts Act by the California legislature; that the warehouse receipts in question were valid under the Uniform Act; that even if Section 1858(b) of the Civil Code was not repealed, the receipts were valid and title to the goods was in the bank. After the submission on briefs, and after oral argument upon the motion, summary judgment was granted by the District Court. (R. 49-52 inclusive.) Upon appeal the Circuit Court of Appeals for the Ninth Circuit affirmed. (R. 61-70 inclusive.) Petition for rehearing was denied. (R. 70.)

QUESTIONS INVOLVED.

1. The warehouse receipts in question are clearly valid under the California (Uniform) Warehouse Receipts Act.

2. Was Section 1858(b) of the Civil Code of California repealed by the enactment of the Uniform Warehouse Receipts Act?

3. If no such repeal was effected, are warehouse receipts which do not comply with the requirements of Section 1858(b) void?

4. Did these receipts comply with Section 1858(b)?

PART I.

THIS IS NOT A PROPER CASE FOR CERTIORARI.

This Court has consistently adhered to the principle that certiorari will be granted only where the case involves grave and serious issues. *Magnum Import Co. v. DeSpoturno Cody,* 262 U. S. 159, 67 L. Ed. 922 (1922.) The mere presentation of a novel point is not, in itself, sufficient. *S. S. Ansaldo San Giorgio I. v. Rheinstrom Bros. Co.,* 294 U. S. 494, 79 L. Ed. 1016 (1934.) The fact that a Federal Court has construed a state statute does not in itself justify review by the Supreme Court. In *Ex parte Woods,* 143 U. S. 203, 36 L. Ed. 125 (1892), the Court said:

> "* * * we do not regard the inquiry as to whether it was settled law in the State of Minnesota that a judgment of dismissal in a former suit, such as pleaded here, was not a bar to a second suit upon the same cause of action, or whether the law in respect of recovery by a servant against his master for injuries received in the course of his employment was properly applied on the trial of this case, as falling within the category of questions of such gravity and general importance as to require the review of the conclusions of the Circuit Court of Appeals in reference to them."

Great weight has been given by this Court to the decisions of Federal District and Circuit Court judges on the law of the state in which said judges sit. *Gardner v. New Jersey,* 329 U. S. 565, 91 L. Ed. 504 (1946). *Helvering v. Stuart,* 317 U. S. 154 (1942). Four federal judges, all of whom are thoroughly familiar with California laws, have already con-

sidered all of the aspects of this case and all have agreed as to the proper decision. We submit that there is no need for further review.

PART II.

THE RECEIPTS INVOLVED HEREIN ARE VALID UNDER SECTION 2 OF THE UNIFORM WAREHOUSE RECEIPTS ACT.

It is our belief that the statement printed on the face of the warehouse receipts here in question complies with both Section 1858 and Section 2 of the Uniform Act. (See Part. IV.) For the sake of argument, however, let us assume that our views are incorrect and that there was no statement on the warehouse receipt with reference to charges.

What is the effect of omitting one of the requirements of Section 2 from a warehouse receipt? Petitioner's brief is so barren of cases dealing with this subject that the Court might be led to believe that this was a matter of first impression. Such is far from the case. A long line of decisions consistently upholds the validity of receipts which are lacking one or more of the requirements of that section.

In *Equitable Trust Co. v. A. C. White Lumber Co.*, 41 F. (2d) 60 (D. C. Id., 1930), the Court dealt with the petitioner's contention in the following language:

> "The only purpose of embodying in the receipt the rate of storage charges, or liabilities incurred by the warehouseman, is to preserve the lien and secure the payment to the warehouseman of such charges. (Citing cases.) So the proper construction of the statute, when applied

to the receipts in question, is that the receipts are not rendered invalid or non-negotiable by the omission of the rate of storage charges, if such appears therein." (p. 65.)

It should be noted that the District Court relied upon this decision as the basis for its summary judgment.

The Illinois Supreme Court in *Manufacturer's Mercantile Co. v. Monarch Refrigerating Co.*, 107 N. E. 885 (1915), reached the same result as to receipts on which the storage charges were left blank, saying:

"The requirements of Section 2 were imposed for the benefit of the holder of the receipt and of the purchasers from him. It was not intended that failure to observe them should render the receipt void in the hands of the holder." (p. 887.)

In *New Jersey Title Guarantee & Trust Co. v. Rector*, 75 A. 931 (N. J. 1910), the Court held that the omission of storage charges did not affect the validity of a receipt. It said at page 932:

"The receipt in this case is not a negotiable one, and it is not pretended that any person has suffered any damage because of the alleged omission of two of the terms named in the act, but the warehouseman in such case is liable under Section 7 to any person purchasing a receipt, supposing it to be negotiable, if the warehouseman neglects to mark it 'non-negotiable.' In each case the terms recited in the act are rather for the benefit of third persons or innocent holders than the original parties, and in either case omissions do not destroy the character of the writing as a warehouseman's receipt."

The following cases reach a similar result:

Joseph v. P. Viane, Inc., 194 N. Y. S. 235 (1922);

Woldson v. Davenport Mill & Elevator Co., 13 P. (2d) 478 (Wash. 1932);

Smith Bros. Co. v. Reicheimer, 83 So. 255 (La. 1919);

Arbuthnot v. Reicheimer, 72 So. 251 (La. 1916);

In re Quaker City Cold Storage Co., 49 F. Supp. 60 (D. C. Pa. 1943) (affd. 138 F. (2d) 566) (C.C.A. 3rd 1943);

Laube v. Seattle Nat. Bank, 228 P. 594 (Wash. 1924);

Finn v. Erickson, 269 P. 232 (Ore. 1928);

Bank of California Nat. Ass'n. v. Schmalz, 9 P. (2d) 112 (Ore. 1932).

Petitioner attempts to avoid the obvious conflict between his interpretation of Section 1858 and the general interpretation of Section 2 by contending that the Uniform Act is not a penal act. Even a superficial reading of Sections 50 through 55 of the Uniform Act shows this to be an erroneous assumption. Those sections establish a comprehensive scheme of criminal penalties in connection with the issuance of warehouse receipts and yet petitioner would have us believe that the California legislature intended the Courts to look to earlier statutes to discover further penalties for use in situations which are specifically covered by the Uniform Act.

PART III.

THE UNIFORM WAREHOUSE RECEIPTS ACT REPEALED SECTION 1858 OF THE CIVIL CODE OF CALIFORNIA AND CONTROLS THE DECISION IN THIS CASE.

Section 1858 of the Civil Code of California was enacted in 1901 while the Uniform Warehouse Receipts Act, hereinafter called Uniform Act, was adopted by California in 1909. The latter is a complete exposition of the law of warehouse receipts and the California Courts following the decision of this Court in *Commercial Natl. Bank v. Canal-Louisiana B. & T. Co.*, 239 U. S. 520, 60 L. Ed. 417 (1915), have held that the Uniform Act superseded and repealed earlier acts. *Jewett v. City Transfer & Storage Co.*, 18 Pac. (2d) 351, 128 Cal. App. 556 (1933).

Petitioner asserts that § 1858 could not have been repealed by the Uniform Act unless the two acts were inconsistent and repugnant. Such an assertion finds no justification in the law of California where it is well established that a general revisory statute automatically repeals any earlier enactments in the same field *even though the two statutes are not inconsistent or repugnant.*

> "While it has been said that in the absence of an express repealing clause a repeal by implication will only take place where the subsequent statute is clearly repugnant to or inconsistent with the provisions of the prior law, it is settled that whenever it clearly appears that a later statute is revisory of the entire subject matter of an earlier one, and was designed as a substitute therefor in all respects, and to cover the entire

subject matter to which both relate, the later statute will operate as a repeal of the earlier one, *although it contains no precise words to that effect, and there are no inconsistencies or repugnancies between them.* * * * This, it has been said, is not so much a repeal by implication as a question of enforcing the will of the legislature last expressed upon the very same subject." (Italics ours.)

23 *Cal. Jur.* 701, 702, 703.

That the Uniform Act is such a revisory statute was decided in the *Jewett* case, supra, where it was said at page 562:

"Considering the provisions of the statute known as the Warehouse Receipts Act, it is apparent that its purpose was to revise the entire subject matter relating to the general business of conducting a public warehouse. As hereinbefore indicated, if by any legal reason it may be held that any of the provisions of sections 3051 and 3052 of the Civil Code apply to the subject of liens of warehousemen, those provisions, as to such liens, must be deemed repealed by the later legislative act."

See also:

Estate of Canagher, 183 P. 161, 181 C. 15 (1919);

Harris v. Cooley, 152 P. 300, 171 C. 144 (1915.)

This is in harmony with the consistent efforts of the California Courts to give the broadest possible effect to the provisions of the various uniform acts.

Chichester v. Commercial Credit Co., 99 P. (2d) 1083, 37 C. A. (2d) 439 (1940);

Porter v. Gibson, 154 P. (2d) 703, 25 C. (2d) 506 (1944);
Mortgage Guarantee Co. v. Chotiner, 64 P. (2d) 138, 8 C. (2d) 110 (1936);
Utah State National Bank v. Smith, 179 P. 160, 180 C. 1 (1919).

We should like to point out, however, that the two statutes actually are inconsistent. As we have seen, there is no question but that these receipts are valid under the Uniform Act. Petitioner claims that under his construction of Section 1858 they are invalid. Thus, if he is correct, the application of Section 1858 to these receipts would result in a holding which would be absolutely contrary to the holding which would result from the application of the Uniform Act.

The cases relied upon by petitioner do not support his position.

Lewis-Simas-Jones Co. v. C. Kee & Co., 148 P. 973, 27 Cal. App. 135 (1916), involved the question as to whether it was necessary to transfer a non-negotiable receipt in order to deliver the commodities represented by said receipt. Before the adoption of the Uniform Act, the California law had not required the transfer of such a receipt, but permitted the warehouseman to deliver the commodities upon the written order of the owner of the goods. In this case, defendant contended that the Uniform Act had changed the former rule. The Court held that as the Uniform Act was identical to the old California rule in this

particular there was no reason to change the former rule. It is apparent that this holding merely states the general rule on this point and in no way supports an assertion that legislation enacted before the Uniform Act was not repealed by the enactment of the latter Act.

In the case of *Norton v. Lyon Van & Storage Co.*, 49 P. (2d) 311, 9 Cal. App. (2d) 199 (1935), the question was the constitutionality of the sections of the Uniform Warehouse Receipts Act dealing with the notice of sale to be given by a warehouseman who was enforcing his lien. The Court held that it could find no reason for declaring those sections unconstitutional. Then, by way of *dicta,* the Court said that in any event the Civil Code of California (Sections 1856, 3051 and 3052) guaranteed the warehouseman his lien. It should be noted that the above statement was in no way necessary to the decision of the matter and it does not appear that the question of effect of the Uniform Act on the older sections was ever argued by the parties.

The petition cites the following cases to establish the point that Section 1858 had not been repealed: *A. Widemann Co. v. Digges,* 131 P. 882, 21 Cal. App. 342 (1913); *Chatterton v. Boone,* 81 A. C. A. 1108 (1947); *Northwestern M. F. Assn. v. Pacific Co.,* 200 P. 934, 187 C. 38 (1921); and *Defense Supplies Corporation v. Lawrence Warehouse Company,* District Court, N. D. California, S. D., 67 Fed. Supp. 16 (1946). The only possible reason for this must be

that each of these cases referred to that section. We must point out, however, that in none of those cases was the issue of the effect of the Uniform Act upon Section 1858 brought to the attention of the Court. In the absence of argument upon this point, it was perhaps understandable how the Court might merely cite this section without giving the matter any thought, and certainly without tending to establish the proposition that 1858 was not repealed by the Uniform Act.

In his petition the trustee also set forth a rather startling argument that the Legislature of California had repudiated the case of *Heffron v. Bank of America*, supra, by later enacting Section 3440.5 of the Civil Code. We should first like to point out that the question of the effect of later legislation upon the Uniform Warehouse Receipts Act had absolutely no connection with this case. We should also like to point out that Section 3440.5 was passed *before* the decision in the *Heffron* case was handed down. (A later modification did not affect the substance of the section but merely clarified certain inherent ambiguities.) It was commented on by the Circuit Court as follows:

> "The enactment in 1939 of Section 3440.5 of the Civil Code may fairly be considered as a move to clarify existing law or to remove doubts of the nature prompting the present litigation." (p. 243.)

It is clear that the later decision harmonized with the earlier statute and not, as contended by petitioner, that the earlier statute repudiated the later decision.

We believe that the effect of the Uniform Act on earlier California statutes has been definitely stated by the *Jewett* case. The views there expressed are in harmony with this Court's decision in the *Canal-Louisiana Bank* case, supra, and with the decision of the Ninth Circuit in the *Heffron* case. It also accords with the policy of making uniform the commercial and financial practices in the various states. The uniformity which the California Legislature and the California and Federal Courts have so earnestly sought cannot be achieved if an earlier statute is made paramount to the Uniform Act.

We submit that Section 1858 of the Civil Code of California was repealed by the adoption of the Uniform Act. As the receipts in question are valid under the Uniform Act, petitioner's cause of action against Lawrence Warehouse Company must fail.

PART IV.

SECTION 1858 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA DOES NOT INTEND TO INVALIDATE RECEIPTS WHICH DO NOT EXACTLY COMPLY THEREWITH.

We have shown that Section 1858 has no application to this case. Conceding its application, however, for the sake of argument, it does not follow, as claimed by petitioner, that these receipts are void.

Petitioner apparently claims that contracts made in violation of any statute containing a criminal penalty are void in California. This proposition does not

square with the basic concept of statutory construction that there is no ironclad rule of interpretation which can be automatically applied to all statutes. The primary task of the Court in each case is to determine the intent of the Legislature which passed the statute under consideration. Our task is, then, to determine the legislative intent in enacting Section 1858.

Most statutes of the type of Section 1858 have been held not to invalidate contracts made in violation thereof. The rule as stated in 6 *R.C.L.* 701, reads as follows:

> "The rule that a contract is invalid if it conflicts with a statute is, however, not an inflexible one. It is only when the statute is silent, and contains nothing from which the contrary is to be inferred, that the contract is void. Therefore where a statute which prohibits a contract at the same time also limits the effect, or declares the consequences which shall attach to the making of it, the general rule that contracts prohibited by statute are void does not apply."

This Court in *Harris v. Runnels,* 12 How. 79, 84, 13 L. Ed. 901, 903 (1851), dealt with a similar statute in the following language:

> "It is true that a statute, containing a prohibition and a penalty, makes the act of which it punishes unlawful, and the same may be implied from a penalty without a prohibition; but it does not follow that the unlawfulness of the act was meant by the Legislature to avoid a contract made in contravention of it."

One of the most elaborate discussions of the precedents on this point is to be found in *In re T. H. Bunch Co.,* 180 F. 519 (D. C. Ark. 1910), where at page 527, the Court said:

> "When a statute imposes specific penalties for its violation, where the act is not malum in se, and the purpose of the statute can be accomplished without declaring contracts in violation thereof illegal, the inference is that it was not the intention of the lawmakers to render such contracts illegal and unenforceable."

See also:

Adams Express Co. v. Darden, 286 F. 61 (C.C.A. 6th, 1923);

Furlong v. Johnston, 204 N.Y.S. 710 (App. Div. 1924);

Uhlmann v. Kin Dow, 193 P. 435 (Ore. 1920).

There can be no doubt that the above rule applies in California. The Supreme Court of the State of California in *Bentley v. Hurlburt,* 96 P. 890, 153 C. 796 (1908) said:

> "The rule (that a contract in violation of a statute is void) is, however, not without exceptions. In *Harris v. Runnels,* 12 How. (U. S.) 79, the Supreme Court of the United States, said 'Before the rule can be applied in any case of a statute prohibiting or enjoining things to be done, with a prohibition and a penalty, or a penalty only for doing a thing which it forbids, the statute must be examined as a whole, to find out whether the makers of it meant that a contract in contravention of it should be void, or that it was not to be so'." (p. 801.)

The validity of the doctrine was also sustained in:

Blockman Commercial & Savings Bank v. F. G. Investment Co., 171 P. 943, 177 Cal. 762 (1918);

Wood v. Krepps, 143 P. 691, 168 C. 382 (1914);

Levison v. Boas, 88 P. 825, 150 C. 185 (1906).

It is submitted that in prescribing a criminal penalty and civil liability for damages, the Legislature intended to set forth all of the penalties and effects of Section 1858. As stated before, the requirements that the storage charges be stated on the receipt is to protect the holder of the receipt against secret liens. The penalties set forth fully accomplish this. First, a criminal penalty is provided as a punishment and a deterrent; then a civil remedy is given to the injured party. What more is needed? Certainly there is nothing in what is sought to be accomplished which demands that a warehouse receipt—which often circulates freely and is the basis of many commerical transactions—be void.

On page 17 of his brief petitioner cites 14 cases which he claims support the proposition that the California Courts have held that *any* contract made in violation of a criminal statute is void. While each of the cited cases held contracts to be void, not one of them dealt with warehouse receipts or any contract which is analogous to a warehouse receipt. They dealt with securities issued in violation of the California Blue Sky laws, with the sale of realty by reference to unrecorded maps and with contracts made by public officers with corporations in which they had a personal

interest. Each case held that for reasons of policy the legislative intent was to avoid the type of contract under consideration. It should also be noted that none of the statutes under consideration contained both civil and criminal remedies as does the Warehouse Receipts Act as well as Section 1858.

We submit that the California Legislature did not intend that the failure of warehouse receipts to comply with all of the requirements of the Civil Code should invalidate the receipts in the hands of innocent holders for value.

PART V.

(a) THE PHRASE "SUBJECT TO LIEN FOR STORAGE HANDLING, INSURANCE AND OTHER CHARGES AS PER CONTRACT AND LEASE WITH THE INDUSTRY SERVED" WHICH APPEARED ON THE FACE OF THE RECEIPT WAS SUFFICIENT IN ITSELF TO SATISFY THE STATUTORY REQUIREMENTS.

It has been established that substantial compliance with the statutory requirements governing the contents of a warehouse receipt is sufficient. (*Standard Bank of Canada v. Lowman,* 1 F. (2d) 935 (D.C. Wash., 1924).

In *Boas v. De Pue Warehouse Co.,* 69 C. A. 246 (1924) (Sup. Ct. denied petition for hearing December 15, 1924), this rule was applied by a California Court to the statement of storage charges. In answer to the claim that a warehouseman's lien for charges extended only to those charges which were mentioned on the receipt, the Court said (pp. 249-250):

"A warehouseman does not lose his lien for charges by failure to fully insert them in a non-negotiable receipt. The purchaser of a non-negotiable instrument is put upon notice that there may be a lien for charges not mentioned therein. * * *

"One to whom a receipt has thus been transferred acquires thereby as against the transferor the title to the goods subject to the terms of any agreement with the transferor. * * *

"A warehouseman issuing a non-negotiable receipt which contains, as here, a recital that the goods stored are subject to a lien for charges is entitled to a lien to the extent of such charges, even though the amount is not stated in the receipt (Western Bank v. Marion Distilling Co., 89 Ky. 91 (5 S.W. 458)), and such recital is sufficient to put the assignee upon notice of the warehouseman's lien (Security Bank v. Minneapolis Cold Storage Co., 55 Minn. 101 (56 N.W. 582)."

This rule was approved and extended in *San Angelo Wine etc. Co. v. South End Warehouse Company,* 61 P. (2d) 1235, 19 C. A. (2d) 749 (1937), by holding that the lien thus created was general and not specific.

It is noteworthy that in reaching its decision the Court ignored Section 1858 and discussed only the Uniform Act. If the Court had felt that Section 1858 was applicable, this receipt would have clearly violated subsection (c) thereof. It is submitted that this case requires a holding that the receipts in issue are valid.

In the *Minneapolis Cold Storage* case, cited above by the Court, the receipt said that the goods were deliverable "upon the payment of charges" and then left the amounts blank. The Court held that this gave the transferee of the receipt sufficient notice of the possibility of charges to support the warehouseman's lien. (See also: *Stein v. Rheinstrom,* 50 N. W. 827 (Minn. 1891).)

It seems clear that the Courts view the statement of storage charges on the receipt as a means of protecting a receipt holder, especially a negotiable receipt holder, from secret liens. The above cases demonstrate that the wording which is more indefinite than that contained on the face of the Lawrence receipts will accomplish this purpose. Certainly if a California Court will uphold a lien for charges which are not stated, it can scarcely be contended that a failure to set forth these charges invalidates the receipt.

It is submitted that the phrase "subject to lien for storage, handling, insurance and other charges as per contract and lease with the industry served" which appeared on the Lawrence receipt accomplishes the legislative purpose and satisfies the requirements of Section 1858 of the Civil Code.

(b) THE WAREHOUSING CONTRACT WHICH CONTAINED A DETAILED STATEMENT OF STORAGE RATES WAS INCORPORATED BY REFERENCE INTO THE RECEIPTS.

These receipts specifically state that the storage rates shall be those set forth in the contract and lease

between Lawrence and "the industry served", which in this case is the C. A. Reed Furniture Company. It is well established that writings referred to in a contract shall be construed as part of the contract, 3 *Williston on Contracts*, Rev. Ed. 1801; 17 *C.J.S.* 716. This doctrine has been applied to warehouse receipts. (*Kirpatrick v. Lebus*, 211 S. W. 572 (Ky. 1919).) It is also well established that parol evidence is acceptable to explain a warehouse receipt (*Starr v. Beerman*, 189 N.Y.S. 174 (App. Div. 1921)) and that the previous course of dealings between the parties is competent evidence as to the meaning of receipts. (*Blackburn Trading Corp. v. Export Fr. Forwarding Co.*, 198 N.Y.S. 133 (App. Div. 1923).)

Respondent, Lawrence Warehouse Company, submits that this reference to and incorporation of the warehousing contract in the receipt satisfied the statutory requirements.

CONCLUSION.

Respondent feels that petitioner has failed to show sufficient grounds for this Court to grant a writ of certiorari. The matter has been thoroughly argued and briefed below and two Courts have held that no cause of action was alleged against respondent, Lawrence Warehouse Company. As appears from this brief, each of the lower Courts had valid and sound legal grounds upon which to base its decision and both of said decisions are amply supported by decisions of both the federal and the California Courts.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Dated, San Francisco, California,
August 2, 1948.

Respectfully submitted,
WILLARD F. WILLIAMSON,
Attorney for Respondent.

W. R. WALLACE, JR.,
W. R. RAY,
JOSEPH MARTIN, JR.,
Of Counsel.